**Laborers Local 332 affiliated with Laborers International Union of North America, AFL–CIO *and* A. Pomerantz and Company *and* W. M. Moyer Company *and* Ceilings, Inc. *and* Jones Ceilings, Inc. *and* Harry Krevolin Associates, Inc. *and* American Ceilings, Inc. *and* General Interior Construction Co., Inc. *and* Spectrum Corp. and Modular Installations Corp. and Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America.** Cases 4–CD–494, 4–CD–539, 4–CD–571, 4–CD–572, 4–CD–535, 4–CD–575, 4–CD–579, 4–CD–580, and 4–CD–581

10 September 1984

## DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

The charges in this Section 10(k) proceeding were filed on 19 March 1980 and 14 October 1981 by A. Pomerantz and Company (Pomerantz); on 3 August 1982 by W. M. Moyer Company (Moyer); on 5 August 1982 by Ceilings, Inc.; on 11 August 1982 by Jones Ceilings, Inc. (Jones Ceilings); on 3 September 1982 by Harry Krevolin Associates, Inc. (Krevolin); on 8 October 1982 by American Ceilings, Inc. (American Ceilings); on 19 October 1982 by General Interior Construction Co., Inc. (General Interior); and on 22 October 1982 by Spectrum Corp. (Spectrum) and Modular Installations Corp. (Modular), alleging that the Respondent, Laborers Local 332 affiliated with Laborers International Union of North America, AFL–CIO (Laborers), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employers to assign certain work to employees it represents rather than to employees represented by the Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America (Carpenters). The consolidated hearing was held on 1, 3, 4, 5, and 8 November 1982; 20 and 21 December 1982; and 12 and 13 January 1983 before Hearing Officer Scott Buchheit.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

### I. JURISDICTION

The parties stipulated, and we find, that Pomerantz, Moyer, Ceilings, Inc., Jones Ceilings, Krevolin, American Ceilings, General Interior, Spectrum, and Modular are Pennsylvania corporations engaged in the sale, service, and installation of various interior finish work, including furniture and furniture systems, walls, partitions, doors, ceiling systems, and plaster. Each has its principal place of business in Pennsylvania, where each annually receives or causes to be sent across state lines goods and services valued in excess of $50,000. Accordingly, we find that each of the above-named Employers is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties stipulated, and we find, that the Laborers and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

### II. THE DISPUTE

#### A. *Background and Facts of Dispute*

The Employers perform interior finish work, including the installation of furniture, furniture components, and furniture systems, the construction of walls, the installation of ceiling systems, the erection of partitions, the installation of doors, and interior plaster work. In general terms, the dispute concerns whether individuals represented by the Carpenters or individuals represented by the Laborers are to transport from the point of delivery to the site of actual construction the materials the Employers use in their interior finish work.

In each dispute at issue in this proceeding, the Employers assigned the work in dispute to their own employees represented by the Carpenters. Each Employer is a party to a collective-bargaining agreement with the Carpenters. Some employers were members of the General Building Contractors Association (GBCA) and were bound to the GBCA's collective-bargaining agreement with the Laborers.

#### B. *Work in Dispute*

The work in dispute with respect to each employer is listed below:

A. Pomerantz and Company: the unloading, handling, and distribution of furniture and other office equipment for Pomerantz at the Smith Kline Building, 16th and Race Streets, Philadelphia, Pennsylvania, and at the Philadelphia Life Building, One Independence Mall, 615 Chestnut Street, Philadelphia, Pennsylvania.

W. M. Moyer Company: the unloading, handling, and stockpiling to the point of distribution of cartoned acoustical ceiling tile and component parts, whether cartoned or uncartoned.

Ceilings, Inc.: the unloading of drywall and related building materials from trucks and the trans-

portation of the drywall and related building materials to stockpiles for Ceilings, Inc. at a construction site located at 1411 Walnut Street, Philadelphia, Pennsylvania.

Jones Ceilings, Inc.: the unloading of cartoned acoustical ceiling tile and component parts, cartoned or uncartoned, from trucks and transporting them to stockpiles for Jones Ceilings, Inc.

Harry Krevolin Associates, Inc.: the unloading and distribution of wall and ceiling materials for Harry Krevolin Associates, Inc. at a jobsite located at 1926 Arch Street, Philadelphia, Pennsylvania.

American Ceilings, Inc.: the unloading, handling, and stockpiling to the point of distribution of cartoned acoustical ceiling tile and component parts, whether cartoned or uncartoned.

General Interior Construction Co., Inc.: the unloading and distribution of one piece welded frames, doors, and hardware materials for General Interior Construction Co., Inc. at a jobsite located at Drexel University Library, 33d & Market Streets, Philadelphia, Pennsylvania.

Spectrum Corp. and Modular Installations Corp.: the work of unloading and distribution of Knoll furniture and furniture systems and components at the Deitrich Hall, University of Pennsylvania, Philadelphia, Pennsylvania.

### C. *Contentions of the Parties*

The Carpenters and the Employers contend that the work in dispute should be assigned to individuals represented by the Carpenters based on area and industry practice, economy and efficiency of operations, employer preference, skills involved, and the respective collective-bargaining agreements between the Employers and the Carpenters.

The Carpenters and the Employers further contend that the instant disputes represent only a sampling of the long and continuous disputes between the Laborers and the Carpenters over the unloading and distribution of construction materials in the Philadelphia area. The Employers and the Carpenters argue that the Laborers has a propensity to engage in further unlawful conduct in order to obtain the work in dispute, citing 52 incidents reported to the police between 1978 and 1982 in which the Laborers claimed work that had been assigned to the carpenters. In November 1982, during the hearing in this case, the Laborers interfered with unloading work that had been assigned to the carpenters at four different worksites, one of which included Employers Spectrum and Modular. The Carpenters and all the Employers, except Pomerantz therefore urge the Board to issue a broad award assigning to the Carpenters-represented employees the unloading and distribution of all construction materials for any employer in any area where the geographic jurisdiction of the Carpenters and the Laborers coincide. Pomerantz argues that the Board should assign to the carpenters all unloading, handling, and distribution of office furniture in the area in which Pomerantz operates and in which the jurisdictions of the Laborers and Carpenters coincide.

Insofar as this proceeding is concerned, the Laborers has consistently argued that the notices of hearing should be quashed on the ground that it has disclaimed an interest in the work in dispute with respect to each Employer. Furthermore, the Laborers contends that the work in dispute should be awarded to individuals represented by it on the basis of area and industry practice, skill, efficiency and economy of operations, and agreements between the Laborers International and the Carpenters International.

### D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated.

The parties stipulated that the Employers assigned to the carpenters the tasks of unloading, handling, and stockpiling to the point of distribution certain materials on the dates and at the sites indicated below:

| *EMPLOYER* | *SITE* | *DATE* |
|---|---|---|
| Pomerantz | Smith-Kline | 3/18/80 |
| Pomerantz | Independence Mall | 10/13/81 |
| Jones Ceiling | 10 Penn Center | 8/11/81 |
| Krevolin | 1926 Arch St. | 9/2/82 |
| Ceilings, Inc. | 1411 Walnut St. | 8/5/82 |
| American Ceilings | Adams Mark Hotel | 8/4 & 8/6/82 |
| General Construction | Drexel U. Library | 10/19/82 |
| Moyer | 1600 Market St. | 8/4/82 |
| Spectrum & Modular | Dietrich Hall | 10/21/82 |

The parties further stipulated that on each of these occasions the Laborers threatened the Employer with work stoppages if the Employer failed to refer the above-described work to individuals represented by the Laborers. Based on the foregoing, and the record as a whole, we find that an object of the Laborers was to force or require the assignment of the disputed work to employees represented by it. Therefore, with respect to each of the cases before us, we conclude that reasonable cause exists to believe that a violation of Section 8(b)(4)(D) of the Act has occurred.

The parties further stipulated, and we find, that no agreed-upon method exists for the voluntary adjustment of the dispute with respect to Ceilings, Inc., American Ceilings, Modular, and Spectrum. With respect to the Employers who were members of the GBCA in mid-1980, we need not resolve whether, at the time of these disputes, those Employers were bound by the current GBCA agreements, and thus required to submit jurisdictional disputes to the Impartial Jurisdictional Disputes Board (IJDB). The IJDB ceased issuing decisions on 1 June 1981, and the record shows that as of the date of the hearing it had not recommenced issuing decisions. Because the IJDB is not in a position to render an award,[1] and because there is no evidence of any other agreed method, we find that there exists no agreed-upon method for voluntary adjustment of the disputes within the meaning of Section 10(k) of the Act.

As noted above, the Laborers contends that the notices of hearing should be quashed for the reason that it disclaimed interest in the work in dispute. The record shows, however, that these disclaimers are ambiguous, and that at least with respect to two Employers, the Laborers has continued to claim the disputed work. At the administrative hearing, counsel for the Laborers first stated that the Laborers claimed an interest in the work in dispute. Counsel subsequently retracted that statement, saying that the Laborers filed disclaimers to "the work involved in the individual projects" at issue in this proceeding. Still later, in its brief to the Board, the Laborers stated that its disclaimers apply to any site where the Employers herein are performing the work in dispute. Since the record does not contain copies of any written disclaimers that may have been filed by the Laborers, we cannot determine the true extent of, or the date of, such disclaimers. The record evidence further indicates that, with respect to at least five of the Employers involved, the Laborers claimed work in dispute after the charges were filed in this proceeding. Again without copies of the disclaimers, we cannot ascertain if the disputes occurred before or after the disclaimers. We do know, however, that on the day the administrative hearing began, the Laborers claimed work in dispute that Employers Spectrum and Modular had assigned to the Carpenters at the same site at issue. Based on these facts, we find that the Laborers' disclaimers cannot form the basis for quashing the notices of hearing in these consolidated cases.

[1] See *Laborers Local 449 (Modern Acoustics)*, 260 NLRB 883, 888 (1982).

### E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

#### 1. Certifications and collective-bargaining agreements

None of the Employers is failing to conform to any prior Board certification or order determining the representative of the employees performing the work in dispute.

Members of the GBCA[2] are parties to collective-bargaining agreements with both the Laborers and the Carpenters. The GBCA agreements do not, however, detail the work jurisdiction of either the Carpenters or the Laborers. Employer Jones Ceiling was bound by the GBCA agreements. Thus, we find that with respect to Jones Ceiling, the collective-bargaining agreements do not favor an award of the work in dispute to members of either the Carpenters or the Laborers.

Based on this record, we are unable to discern whether Employers Moyer and General Interior are bound by the GBCA agreements, or by the Interior Finish Contractors Association of Delaware Valley (IFCA) agreement. Similarly, the record does not permit us to discern whether Employers Modular and Pomerantz were bound by the GBCA agreements. Consequently, we also find that with respect to Employers Moyer, General Interior, Modular, and Pomerantz, the collective-bargaining agreements do not favor an award to members of either the Laborers or the Carpenters.

Employers American Ceiling and Krevolin are parties to the agreement between the IFCA and the Carpenters, which specifically assigns the work in dispute to carpenters. Employer Spectrum[3] is a party to the agreement between the Carpenters and the Furniture Handlers and Installers Association of Philadelphia and Vicinity (FHIA), which also

[2] It is unclear from the record whether all members of GBCA are necessarily bound to the collective-bargaining agreements.

[3] We are unable to ascertain from the record whether Spectrum was also a member of the GBCA, or whether it had bound itself to the GBCA agreement, when the GBCA extended its contract with the Carpenters until 30 April 1983. If Spectrum were bound, our holding with respect to Modular would also apply to Spectrum.

specifically assigns the work in dispute to carpenters. Accordingly, we find that with respect to American Ceiling, Krevolin, and Spectrum, the factor of collective-bargaining agreements favors an award of the work in dispute to those Employers' employees represented by the Carpenters.

There is no evidence with respect to Ceilings, Inc.'s collective-bargaining agreements. Accordingly, the collective-bargaining factor does not support an award to either group.

2. Company preference and past practice

All the Employers assigned the disputed work to their own employees represented by the Carpenters. The record indicates that at least since 1980 these Employers' regular practice has been to assign the work to employees whom the Carpenters represent. At the hearing and in their briefs, the Employers expressed a continuing preference for this assignment. These factors support an award of the work to employees represented by the Carpenters.

3. Area and industry practice

The Laborers submitted copies of over 100 IJDB decisions awarding the work in dispute to the Laborers, and excerpts from approximately 15 agreements in which the Carpenters agreed that the Laborers would perform the work in dispute. The Laborers argues that these IJDB awards and agreements with the Carpenters reflect area and industry practice. With respect to area practice, we note that only eight of the IJDB decisions pertain to work in dispute in Philadelphia. This evidence is countered by six IJDB decisions submitted by the Carpenters awarding disputed work in Philadelphia to carpenters. None of the agreements with the Carpenters specifically applies to the Philadelphia area. On the other hand, the Carpenters submitted copies of the letters from approximately 27 companies, other than those involved in this matter, stating that they customarily assigned the unloading of their construction materials to Carpenters-represented employees. Moreover, a business agent for the Carpenters testified that since 1981 he personally had been involved in 52 disputes in Philadelphia between the Carpenters and the Laborers in which carpenters had been assigned the work. On the basis of this evidence, we find that the factor of area practice favors awarding the work in dispute to employees represented by the Carpenters.

With respect to industry practice, the IJDB awards and the excerpts from agreements between the Laborers and the Carpenters show that the work in dispute has been awarded to Laborers-represented employees in certain areas of the country. However, fewer than one-third of those IJDB decisions were dated after 1970. Similarly, of the few excerpts of agreements between the two Unions that were dated, two were dated 1970 and the rest predated those. Significantly, the director of jurisdiction for the Laborers testified that unloading practices vary from locality to locality and that there was not one consistent practice across the country for the work in dispute.

As the above discussion indicates, the evidence concerning industry practice is conflicting. We therefore find that industry practice is not sufficiently clear to be helpful in determining this dispute.

4. Relative skills

As discussed above, the disputed work involves the unloading, handling, and distribution of a variety of construction materials from the point of delivery to the areas where the actual interior finishing work is to be performed. The record reflects that many of the materials in dispute are relatively fragile and are susceptible to being damaged if not handled carefully. The Employers and Carpenters argue that because the carpenters work with the materials daily and are ultimately responsible for installing them, they have greater knowledge of and sensitivity to their proper care. However, none of the parties presented evidence, statistical or otherwise, reflecting the degree of damage inflicted by employees performing such work. Accordingly, we find that the Carpenters' and Employers' contention with respect to this factor is speculative and inconclusive in our determination.

5. Economy and efficiency of operations

In order for individuals represented by the Laborers to perform the work in dispute, it would be necessary for the Employers to hire such individuals on an ad hoc basis for those times when delivery of materials would be expected at the jobsite. The delivery truck would have to arrive on schedule to minimize downtime and, if the truck did not arrive that particular day, the Employer would nevertheless be required to pay the laborers the guaranteed reporting pay. In addition, if the load contained uncartoned materials the Employer would have to utilize two teams of employees to do the unloading—one for the cartoned materials and one for the uncartoned materials.

By contrast, under the current arrangements, the Employers assign as many employees represented by the Carpenters as are necessary to unload a particular truck at a given time. The unloading conditions vary, and the number of individuals assigned depends on the size of the load. In addition, the

carpenters unload both the uncartoned and cartoned materials.

Finally, the record also contains evidence that the carpenters' ability to read blueprints, their familiarity with the materials and the layout of the jobsite, and their ultimate responsibility for installing the materials enable them to detect damaged or incorrect deliveries and to distribute the appropriate quantity of materials to the places on the jobsite where they are needed. The laborers testified that if the place for distribution is not marked on the cartons, they have to rely on directions from the carpenter foreman as to the proper place for the materials. Thus, when the carpenters unload, the Employer does not have to employ an additional supervisor to direct the unloading or incur additional expenses and risks associated with double handling of the materials.

Accordingly, we find, based on all the above, that the factor of efficiency and economy of operations favors an award of the work in dispute to employees represented by the Carpenters.

### Conclusion

Upon the record as a whole, and after a full consideration of all relevant factors involved, we conclude that employees who are represented by the Carpenters, rather than individuals represented by the Laborers, should be assigned the work in dispute. We reach this conclusion relying on the Employers' preferences and past practices, area practice, some of the collective-bargaining agreements, and efficiency and economy of operations.

### Scope of the Determination

The Carpenters and the majority of the Employers contend that the Board should issue a broad award assigning the unloading and distribution of any construction materials for any employer in any area where the geographical jurisdiction of the Carpenters and the Laborers coincide. Although we agree that an award covering more than the specific jobsites herein is warranted, we do not find that the extensive order the Carpenters and the Employer seek is appropriate.

In certain circumstances, the Board will issue an award broad enough to encompass the geographical area in which an employer does business and in which the jurisdictions of the competing unions coincide. In determining the appropriateness of such an award, the Board considers whether the dispute has been a continuing source of controversy and is likely to recur.[4]

We find that the disputes are likely to recur, because after five of the Employers filed charges, the Laborers continued to claim the work in dispute at certain of the sites at issue as well as at other sites. Furthermore, on the first day of the administrative hearing the Laborers again claimed the work in dispute assigned to Carpenters-represented employees by Employers Spectrum and Modular at the same site where the instant dispute arose.

In view of the foregoing, our determination applies not only to the jobsites on which the instant disputes arose, but to all similar work done or to be done by the Employers in this proceeding where the geographical jurisdiction of the Laborers Local 332 and the Carpenters Metropolitan District Council of Philadelphia and Vicinity coincide.[5]

## DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of the Employers who are represented by the Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, where its geographical jurisdiction coincides with that of Laborers Local 332, are entitled to perform the work of loading, unloading, and distributing:

(a) Furniture, furniture systems, or paraphernalia and hardware associated with these products for A. Pomerantz and Company and Spectrum Corp. and Modular Installations Corp.

(b) Ceiling tiles and related materials for Jones Ceilings, Inc. and W. M. Moyer Company.

(c) Drywall and related building materials for Ceilings, Inc.

(d) Acoustical ceilings and related materials for American Ceilings, Inc.

(e) Frames, doors, and related hardware for General Interior Construction Co.

(f) Wall and ceiling materials for Harry Krevolin Associates, Inc.

2. Laborers Local 332, affiliated with Laborers International Union of North America, AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force A. Pomerantz and

[4] See generally *Electrical Workers IBEW Local 11 (ITT Communications)*, 217 NLRB 397 (1975).

[5] We will not, however, enlarge the scope of the award to encompass employers not involved in this proceeding. First, we do not think it appropriate, under the circumstances, to preclude other employers from assigning similar unloading work to the employees it chooses, without having the opportunity, as the Employers did here, to present evidence supporting its assignment. In addition, the Laborers has not been shown to have acted in a manner inconsistent with any Board determination. Although the Employers and the Carpenters cited 52 "incidents" reported to the police between 1978 and 1982 involving work that had been assigned to the Carpenters-represented employees and claimed by the Laborers, we are unable to determine from the evidence presented that the Laborers engaged in any violation of the Act. There is no indication that any charges were filed with the Board after any of these "incidents."

Company; W. M. Moyer Company; Ceilings, Inc.; Jones Ceilings, Inc.; Harry Krevolin Associates, Inc.; American Ceilings, Inc.; General Interior Construction Co., Inc.; or Spectrum Corp. and Modular Installations Corp. to assign the disputed work to employees represented by it.

3. Within 10 days from the date of this Decision and Determination of Dispute, Laborers Local 332 affiliated with Laborers International Union of North America, AFL-CIO shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing or requiring the aforementioned Employers, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with this determination.